

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1501

AN ACT to amend the Indiana Code concerning trade regulation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 4-2-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter, and unless the context clearly denotes otherwise:

(1) "Agency" means an authority, a board, a branch, a bureau, a commission, a committee, a council, a department, a division, an office, a service, or other instrumentality of the executive, including the administrative, department of state government. The term includes a body corporate and politic set up as an instrumentality of the state ~~that chooses to be under the jurisdiction of the state ethics commission.~~ **and a private, nonprofit, government related corporation.** The term does not include any of the following:

- (A) The judicial department of state government.
- (B) The legislative department of state government.
- (C) A state educational institution (as defined in IC 20-12-0.5-1).
- (D) A political subdivision.
- ~~(E) A private nonprofit government related corporation.~~

(2) "Appointing authority" means the chief administrative officer of an agency. The term does not include a state officer.

(3) "Assist" means to:

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- (A) help;
- (B) aid;
- (C) advise; or
- (D) furnish information to;

a person. The term includes an offer to do any of the actions in clauses (A) through (D).

(4) "Business relationship" means dealings of a person with an agency seeking, obtaining, establishing, maintaining, or implementing:

- (A) a pecuniary interest in a contract or purchase with the agency; or
- (B) a license or permit requiring the exercise of judgment or discretion by the agency.

(5) "Commission" refers to the state ethics commission created under section 2 of this chapter.

(6) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(7) "Employee" means an individual, other than a state officer, who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services. ~~for more than thirty (30) hours a week for more than twenty-six (26) weeks during any one (1) year period.~~

(8) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation. For purposes of this chapter, a customer or client of a self-employed individual in a sole proprietorship or a professional practice is not considered to be an employer.

(9) "Financial interest" means an interest:

- (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
- (B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an

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interest that is not greater than the interest of the general public or any state officer or any state employee.

(10) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) ~~the information~~ is not in a public record, but if it were, would be confidential.

(11) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

(12) "Political subdivision" means a county, city, town, township, school district, municipal corporation, special taxing district, or other local instrumentality. The term includes an officer of a political subdivision.

(13) "Property" has the meaning set forth in IC 35-41-1-23.

(14) "Represent" means to do any of the following on behalf of a person:

(A) Attend an agency proceeding.

(B) Write a letter.

(C) Communicate with an employee of an agency.

(15) "Special state appointee" means a person who is:

(A) not a state officer or employee; and

(B) elected or appointed to an authority, a board, a commission, a committee, a council, a task force, or other body designated by any name that:

(i) is authorized by statute or executive order; and

(ii) functions in a policy or an advisory role in the executive (including the administrative) department of state government, including a separate body corporate and politic.

(16) "State officer" means any of the following:

(A) The governor.

(B) The lieutenant governor.

(C) The secretary of state.

(D) The auditor of state.

(E) The treasurer of state.

(F) The attorney general.

(G) The superintendent of public instruction.

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(17) The masculine gender includes the masculine and feminine.

(18) The singular form of any noun includes the plural wherever appropriate.

SECTION 2. IC 4-2-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) There is created a state ethics commission.

(b) The commission is composed of five (5) members appointed by the governor.

(c) No more than three (3) commission members shall be of the same political party. A person who:

- (1) holds an elected or appointed office of the state;
- (2) is employed by the state; or
- (3) is registered as a lobbyist under IC 2-7-2-1;

may not be a member of the commission. The governor shall designate one (1) member of the commission as the ~~chairman~~ **chairperson**. Each appointment to the commission is for a period of four (4) years. A vacancy shall be filled by the governor for the unexpired term.

(d) The ~~governor and state budget agency~~ **inspector general** shall provide ~~such~~ rooms and staff assistance ~~as the commission may require~~ **for the commission**.

SECTION 3. IC 4-2-6-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. The commission has jurisdiction over the following persons:

- (1) A current or former state officer.
- (2) A current or former employee.
- (3) A person who has or had a business relationship with an agency.
- (4) A **current or former** special state appointee.

SECTION 4. IC 4-2-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) The commission may do any of the following:

- (1) Upon a vote of four (4) members, ~~or upon the written request of the governor, initiate and conduct an investigation. refer any matter within the inspector general's authority to the inspector general for investigation.~~
- (2) Receive and hear any complaint ~~which~~ **filed with the commission by the inspector general that** alleges a violation of this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of state officers, employees, **an executive branch lobbyist (as defined in IC 4-2-7-1)**, or special state appointees.
- (3) Obtain information and, upon a vote of four (4) members,

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compel the attendance and testimony of witnesses and the production of pertinent books and papers by a subpoena enforceable by the circuit or superior court of the county where the subpoena is to be issued.

(4) Recommend legislation to the general assembly relating to the conduct and ethics of state officers, employees, and special state appointees, including whether additional specific state officers or employees should be required to file a financial disclosure statement under section 8 of this chapter.

(5) Adopt rules under IC 4-22-2 to implement this chapter.

(6) Prescribe and provide forms for statements required to be filed under this chapter.

(7) Accept and file information:

(A) voluntarily supplied; and

(B) that exceeds the requirements of this chapter.

(8) Inspect financial disclosure forms.

(9) Notify persons who fail to file forms required under this chapter.

(10) Develop a filing, a coding, and an indexing system required by this chapter and IC 35-44-1-3(f).

(11) Conduct research.

(12) Prepare interpretive and educational materials and programs.

(b) The commission shall do the following:

(1) Act as an advisory body by issuing advisory opinions to interpret this chapter, the commission's rules, or any other statute or rule establishing standards of official conduct upon:

(A) request of:

(i) a state officer or a former state officer;

(ii) an employee or a former employee;

(iii) a person who has or had a business relationship with an agency; or

(iv) a special state appointee **or former special state appointee**; or

(B) motion of the commission.

(2) Conduct its proceedings in the following manner:

(A) When a complaint is filed with the commission, the commission may:

(i) reject, without further proceedings, a complaint that the commission considers frivolous or inconsequential;

(ii) reject, without further proceedings, a complaint that the commission is satisfied has been dealt with appropriately by an agency;

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(iii) upon the vote of four (4) members, determine that the complaint does not allege facts sufficient to constitute a violation of this chapter or the code of ethics and dismiss the complaint; or

(iv) forward a copy of the complaint to the attorney general, the prosecuting attorney of the county in which the alleged violation occurred, the state board of accounts, a state officer, the appointing authority, or other appropriate person for action, and stay the commission's proceedings pending the other action.

(B) If a complaint is not disposed of under clause (A), a copy of the complaint shall be sent to the person alleged to have committed the violation.

(C) If the complaint is not disposed of under clause (A), ~~or when the commission initiates an investigation on its own motion or upon request of the governor,~~ the commission ~~shall~~ **may** promptly ~~investigate~~ **refer** the alleged violation **for additional investigation by the inspector general.** ~~If after the preliminary investigation,~~ the commission finds by a majority vote that probable cause exists to support an alleged violation, it shall convene a public hearing on the matter within sixty (60) days after making the determination. The respondent shall be notified within fifteen (15) days of the commission's determination. **Except as provided in this section,** the commission's evidence relating to an investigation is confidential. ~~until the earlier of:~~

- (i) the time the respondent is notified of the hearing; or
- (ii) the time the respondent elects to have the records divulged.

(D) **A complaint filed with the commission is open for public inspection after the commission finds that probable cause exists. However, a complaint filed by the inspector general that contains confidential information under IC 4-2-7-8 may be redacted to exclude the confidential information. Every hearing and other proceeding in which evidence is received by the commission is open to the public. Investigative reports by the inspector general that are not filed with the commission may be kept confidential.**

(E) A:

- (i) complaint that is filed with; or
- (ii) proceeding that is held by;

the commission before the commission has found probable

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**cause is confidential unless the target of the investigation elects to have information disclosed, or the commission elects to respond to public statements by the person who filed the complaint.**

~~However;~~ **(F)** The commission may acknowledge:

- (i)** the existence and scope of an investigation **before the finding of probable cause;** or
- (ii)** that the commission did not find probable cause to support an alleged violation.

~~(D)~~ **(G)** If a hearing is to be held, the respondent may examine and make copies of all evidence in the commission's possession relating to the charges. At the hearing, the charged party shall be afforded appropriate due process protection consistent with IC 4-21.5, including the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses.

~~(E)~~ **(H)** After the hearing, the commission shall state its findings of fact. If the commission, based on competent and substantial evidence, finds by a majority vote that the respondent has violated this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of state officers, employees, or special state appointees, it shall state its findings in writing in a report, which shall be supported and signed by a majority of the commission members and shall be made public. ~~The report may make a recommendation for the sanctions to be imposed by the appointing authority or state officer for the violation, including:~~

- ~~(i) a letter of counseling;~~
- ~~(ii) a reprimand;~~
- ~~(iii) a suspension with or without pay; or~~
- ~~(iv) the dismissal of an employee.~~

~~(F)~~ **(I)** If the commission, based on competent and substantial evidence, finds by a majority vote a violation of this chapter, a rule adopted under this chapter, or any other statute or rule establishing standards of official conduct of state officers, employees, or special state appointees, the commission may also take any of the actions provided in section 12 of this chapter.

~~(G)~~ **(J)** The report required under clause ~~(E)~~ **(H)** shall be presented to:

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- (i) the respondent;
- (ii) the appointing authority or state officer of the employee, former employee, or special state appointee; and
- (iii) the governor.

~~(H)~~ **(K)** The commission may also forward the report to any of the following:

- (i) The prosecuting attorney of each county in which the violation occurred.
- (ii) The state board of accounts.
- (iii) The state personnel director.
- (iv) The attorney general.
- (v) A state officer.
- (vi) The appointing authority.
- (vii) Any other appropriate person.

~~(I)~~ **(L)** If the commission finds the respondent has not violated a code or statutory provision, it shall dismiss the charges.

**(3) Review all conflict of interest disclosures received by the commission under IC 35-44-1-3, maintain an index of conflict of interest those disclosures, received by the commission under IC 35-44-1-3, and issue advisory opinions and screening procedures as set forth in section 9 of this chapter.**

(c) Notwithstanding IC 5-14-3-4(b)(8)(C), the records of the commission concerning the case of a respondent that are not confidential under ~~subsection (b)(2)(C)~~ **IC 5-14-3-4(b)(2)(C)** shall be available for inspection and copying in accordance with IC 5-14-3.

SECTION 5. IC 4-2-6-5.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.5. (a) A current state officer, employee, or special state appointee shall not knowingly:**

- (1) accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired;**
- (2) accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment; or**
- (3) use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:**

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**(A) of substantial value; and**

**(B) not properly available to similarly situated individuals.**

**(b) A written advisory opinion issued by the inspector general or the individual's supervisor granting approval of outside employment is conclusive proof that an individual is not in violation of subsection (a)(1) or (a)(2).**

SECTION 6. IC 4-2-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) The following persons shall file a written financial disclosure statement:

(1) The governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, and state superintendent of public instruction.

(2) Any candidate for one (1) of the offices in subdivision (1) who is not the holder of one (1) of those offices.

(3) Any person who is the appointing authority of an agency.

(4) The director of each division of the department of administration.

(5) Any purchasing agent within the procurement division of the department of administration.

(6) An employee required to do so by rule adopted by the commission.

(b) The statement shall be filed with the commission as follows:

(1) Not later than February 1 of every year, in the case of the state officers and employees enumerated in subsection (a).

(2) If the individual has not previously filed under subdivision (1) during the present calendar year and is filing as a candidate for a state office listed in subsection (a)(1), before filing a declaration of candidacy under IC 3-8-2 or IC 3-8-4-11, petition of nomination under IC 3-8-6, or declaration of intent to be a write-in candidate under IC 3-8-2-2.5, or before a certificate of nomination is filed under IC 3-8-7-8, in the case of a candidate for one (1) of the state offices (unless the statement has already been filed when required under IC 3-8-4-11).

(3) Not later than sixty (60) days after employment or taking office, unless the previous employment or office required the filing of a statement under this section.

(4) Not later than thirty (30) days after leaving employment or office, unless the subsequent employment or office requires the filing of a statement under this section.

The statement must be made under affirmation.

(c) The statement shall set forth the following information for the preceding calendar year or, in the case of a state officer or employee

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who leaves office or employment, the period since a previous statement was filed:

- (1) The name and address of any person known:
  - (A) to have a business relationship with the agency of the state officer or employee or the office sought by the candidate; and
  - (B) from whom the state officer, candidate, or the employee, or that individual's spouse or unemancipated children received a gift or gifts having a total fair market value in excess of one hundred dollars (\$100).
- (2) The location of all real property in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children has an equitable or legal interest either amounting to five thousand dollars (\$5,000) or more or comprising ten percent (10%) of the state officer's, candidate's, or the employee's net worth or the net worth of that individual's spouse or unemancipated children. An individual's primary personal residence need not be listed, unless it also serves as income property.
- (3) The names and the nature of the business of the employers of the state officer, candidate, or the employee and that individual's spouse.
- (4) The following information about any sole proprietorship owned or professional practice operated by the state officer, candidate, or the employee or that individual's spouse:
  - (A) The name of the sole proprietorship or professional practice.
  - (B) The nature of the business.
  - (C) Whether any clients are known to have had a business relationship with the agency of the state officer or employee or the office sought by the candidate.
  - (D) The name of any client or customer from whom the state officer, candidate, employee, or that individual's spouse received more than thirty-three percent (33%) of the state officer's, candidate's, employee's, or that individual's spouse's nonstate income in a year.
- (5) The name of any partnership of which the state officer, candidate, or the employee or that individual's spouse is a member and the nature of the partnership's business.
- (6) The name of any corporation (other than a church) of which the state officer, candidate, or the employee or that individual's spouse is an officer or a director and the nature of the corporation's business.

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(7) The name of any corporation in which the state officer, candidate, or the employee or that individual's spouse or unemancipated children own stock or stock options having a fair market value in excess of ten thousand dollars (\$10,000). **However, if the stock is held in a blind trust, the name of the administrator of the trust must be disclosed on the statement instead of the name of the corporation.** A time or demand deposit in a financial institution or insurance policy need not be listed.

(8) The name and address of the most recent former employer.

(9) Additional information that the person making the disclosure chooses to include.

Any such state officer, candidate, or employee may file an amended statement upon discovery of additional information required to be reported.

(d) A person who:

(1) fails to file a statement required by rule or this section in a timely manner; or

(2) files a deficient statement;

upon a majority vote of the commission, is subject to a civil penalty at a rate of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

(e) A person who intentionally or knowingly files a false statement commits a Class A infraction.

SECTION 7. IC 4-2-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. **(a) A state officer, or an employee, or a special state appointee may not participate in any decision or vote of any kind in which the state officer or the employee, or that individual's spouse or unemancipated children has a financial interest. if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:**

**(1) The state officer, employee, or special state appointee.**

**(2) A member of the immediate family of the state officer, employee, or special state appointee.**

**(3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a trustee, a partner, or an employee.**

**(4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.**

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(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(1) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(2) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(c) A written determination under subsection (b)(2) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(2) shall be filed with the appointing authority.

SECTION 8. IC 4-2-6-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to:

(1) a state officer, an employee, or a special state appointee who does not participate in or have official responsibility for any of the activities of the contracting agency, if:

(A) the contract is made after public notice or, where applicable, through competitive bidding;

(B) the state officer, employee, or special state appointee files with the commission a statement making full disclosure of all related financial interests in the contract;

(C) the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee; and

(D) in the case of a contract for professional services, the

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appointing authority of the contracting agency makes and files a written certification with the commission that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee; or

(2) a state officer, an employee, or a special state appointee who, acting in good faith, learns of an actual or prospective violation of the prohibition in subsection (a), if, not later than thirty (30) days after learning of the actual or prospective violation, the state officer, employee, or special state appointee:

(A) makes a full written disclosure of any financial interests to the contracting agency and the commission; and

(B) terminates or disposes of the financial interest.

SECTION 9. IC 4-2-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) This section applies only:

(1) to a former state officer or former employee; and

(2) during the period that is twelve (12) months after the date the former state officer or former employee had responsibility for the particular matter.

(b) As used in this section, "legislative matter" has the meaning set forth in IC 2-2-1-3-1.

(c) (a) As used in this section, "particular matter" means:

- (1) an application;
- (2) a business transaction;
- (3) a claim;
- (4) a contract;
- (5) a determination;
- (6) an enforcement proceeding;
- (7) an investigation;
- (8) a judicial proceeding;
- (9) a lawsuit;
- (10) a license;
- (11) an economic development project; or
- (12) a public works project.

The term does not include the proposal or consideration of a legislative matter or the proposal, consideration, adoption, or implementation of a rule or an administrative policy or practice of general application.

(d) A former state officer or former employee may not represent or

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assist a person regarding a particular matter involving a specific party or parties:

- (1) that was under consideration by the agency that was served by the state officer or employee; and
- (2) in which the officer or employee participated personally and substantially through:
  - (A) a decision;
  - (B) an approval;
  - (C) a disapproval;
  - (D) a recommendation;
  - (E) giving advice;
  - (F) an investigation; or
  - (G) the substantial exercise of administrative discretion.

(e) An appointing authority or state officer of the agency that was served by the former state officer or former employee may waive application of this section if the appointing authority or state officer determines that representation or assistance of a former state officer or former employee is not adverse to the public interest. A waiver under this subsection must be in writing and must be filed with the commission.

(f) This section does not prohibit an agency from contracting with a former state officer or employee to act on a matter on behalf of the agency.

**(b) This subsection applies only to a person who served as a state officer, employee, or special state employee after January 10, 2005. A former state officer, employee, or special state appointee may not accept employment or receive compensation:**

- (1) as a lobbyist (as defined in IC 4-2-7-1);**
- (2) from an employer if the former state officer, employee, or special state appointee was:**
  - (A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and**
  - (B) in a position to make a discretionary decision affecting the:**
    - (i) outcome of the negotiation; or**
    - (ii) nature of the administration; or**
- (3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;**

**before the elapse of at least three hundred sixty-five (365) days**

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after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

- (1) employment; or
- (2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the inspector general certifying that:

- (1) employment of;
- (2) representation by; or
- (3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

SECTION 10. IC 4-2-6-11.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11.5. (a) This section applies only to a person appointed after January 10, 2005.

(b) As used in this section, "advisory body" means a board, a commission, a committee, an authority, or a task force of the executive department that is authorized only to make nonbinding recommendations.

(c) Except as provided in subsection (d), a lobbyist (as defined in IC 4-2-7-1) may not serve as a member of a board, a commission, a committee, an authority, or a task force of the executive department.

(d) A lobbyist (as defined in IC 4-2-7-1) may serve as a member

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of an advisory body.

SECTION 11. IC 4-2-6-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. If the commission finds a violation of this chapter, a rule adopted under this chapter, or any other statute or rule governing official conduct of state officers, employees, or special state appointees in a proceeding under section 4 of this chapter, the commission may take any of the following actions:

- (1) Impose a civil penalty upon a respondent not to exceed ~~the greater of:~~
  - (A) three (3) times the value of any benefit received from the violation. ~~or~~
  - (B) ~~ten thousand dollars (\$10,000):~~
- (2) Cancel a contract.
- (3) Bar a person from entering into a contract with any agency for a period specified by the commission. ~~The period specified by the commission may not exceed two (2) years from the date the action of the commission is effective.~~
- (4) **Order restitution or disgorgement.**
- (5) **Reprimand, suspend, or terminate an employee or a special state appointee.**
- (6) **Reprimand or recommend the impeachment of a state officer.**
- (7) **Bar a person from future state employment as an employee or future appointment as a special state appointee.**

SECTION 12. IC 4-2-6-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) ~~Subject to~~ **Except as provided in** subsection (b), a state officer, ~~or an employee,~~ **or a special state appointee** shall not retaliate or threaten to retaliate against an employee or a former employee because the employee or former employee did any of the following:

- (1) Filed a complaint with the commission **or the inspector general.**
- (2) Provided information to the commission **or the inspector general.**
- (3) Testified at a commission proceeding.
- (b) ~~Notwithstanding subsection (a),~~ A state officer, ~~or an employee,~~ **or a special state appointee** may take appropriate action against an employee who took any of the actions listed in subsection (a) if the employee:
  - (1) did not act in good faith; or
  - (2) knowingly or recklessly provided false information or

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testimony to the commission.

**(c) A person who violates this section is subject to action under section 12 of this chapter.**

**(d) A person who knowingly or intentionally violates this section commits a Class A misdemeanor. In addition to any criminal penalty imposed under IC 35-50-3, a person who commits a misdemeanor under this section is subject to action under section 12 of this chapter.**

SECTION 13. IC 4-2-6-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. **(a)** A person may not do any of the following:

(1) Knowingly or intentionally induce or attempt to induce, by threat, coercion, suggestion, or false statement, a witness or informant in a commission proceeding or investigation **conducted by the inspector general** to do any of the following:

(A) Withhold or unreasonably delay the production of any testimony, information, document, or thing.

(B) Avoid legal process summoning the person to testify or supply evidence.

(C) Fail to appear at a proceeding or investigation to which the person has been summoned.

(D) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.

(2) Alter, damage, or remove a record, document, or thing except as permitted or required by law, with the intent to prevent the record, document, or thing from being produced or used in a commission proceeding or investigation **conducted by the inspector general**.

(3) Make, present, or use a false record, document, or thing with the intent that the record, document, or thing appear in a commission proceeding or investigation to mislead a commissioner or commission employee.

**(b) A person who knowingly or intentionally violates subsection (a) commits a Class A misdemeanor.**

SECTION 14. IC 4-2-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

#### **Chapter 7. The Inspector General**

**Sec. 1. The following definitions apply throughout this chapter:**

(1) "Agency" means an authority, a board, a branch, a

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commission, a committee, a department, a division, or other instrumentality of the executive, including the administrative, department of state government. The term includes a body corporate and politic established as an instrumentality of the state. The term does not include the following:

- (A) The judicial department of state government.
- (B) The legislative department of state government.
- (C) A political subdivision (as defined in IC 4-2-6-1).
- (2) "Business relationship" has the meaning set forth in IC 4-2-6-1.
- (3) "Employee" means an individual who is employed by an agency on a full-time, a part-time, a temporary, an intermittent, or an hourly basis. The term includes an individual who contracts with an agency for personal services.
- (4) "Ethics commission" means the state ethics commission created by IC 4-2-6-2.
- (5) "Lobbyist" means an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under rules adopted by the Indiana department of administration.
- (6) "Person" has the meaning set forth in IC 4-2-6-1.
- (7) "Special state appointee" has the meaning set forth in IC 4-2-6-1.
- (8) "State officer" has the meaning set forth in IC 4-2-6-1.

**Sec. 2. (a)** There is established the office of the inspector general. The office of the inspector general consists of the inspector general, who is the director of the office, and an additional staff of deputy inspectors general, investigators, auditors, and clerical employees appointed by the inspector general as necessary to carry out the duties of the inspector general. The inspector general shall provide rooms and staff assistance for the ethics commission.

**(b)** The inspector general is responsible for addressing fraud, waste, abuse, and wrongdoing in agencies.

**(c)** The governor shall appoint the inspector general. The inspector general:

- (1) except as provided in subdivision (2), shall be appointed for a term that expires on the earlier of the date that:
  - (A) the term of the governor who appointed the inspector general expires; or
  - (B) the governor leaves office;
- (2) may only be removed from office by the governor for:
  - (A) neglect of duty;

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- (B) misfeasance;
- (C) malfeasance; or
- (D) nonfeasance;
- (3) must be an attorney licensed to practice law in Indiana; and
- (4) is entitled to receive compensation set by the governor and approved by the budget agency.

If the governor is reelected, the governor may reappoint the inspector general for an additional term. The inspector general's compensation may not be reduced during the inspector general's continuance in office.

(d) Subject to the approval of the budget agency, the inspector general shall fix the salary of all other employees of the office of the inspector general.

(e) Except for information declared confidential under this chapter, records of the office of the inspector general are subject to public inspection under IC 5-14-3.

(f) IC 5-14-1.5 (the open door law) applies to public meetings of the office of the inspector general.

**Sec. 3. The inspector general shall do the following:**

- (1) Initiate, supervise, and coordinate investigations.
- (2) Recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government.
- (3) Receive complaints alleging the following:
  - (A) A violation of the code of ethics.
  - (B) Bribery (IC 35-44-1-1).
  - (C) Official misconduct (IC 35-44-1-2).
  - (D) Conflict of interest (IC 35-44-1-3).
  - (E) Profiteering from public service (IC 35-44-1-7).
  - (F) A violation of the executive branch lobbying rules.
  - (G) A violation of a statute or rule relating to the purchase of goods or services by a current or former employee, state officer, special state appointee, lobbyist, or person who has a business relationship with an agency.
- (4) If the inspector general has reasonable cause to believe that a crime has occurred or is occurring, report the suspected crime to:
  - (A) the governor; and
  - (B) appropriate state or federal law enforcement agencies and prosecuting authorities having jurisdiction over the matter.

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(5) Adopt rules under IC 4-22-2 and section 5 of this chapter to implement a code of ethics.

(6) Ensure that every:

(A) employee;

(B) state officer;

(C) special state appointee; and

(D) person who has a business relationship with an agency; is properly trained in the code of ethics.

(7) Provide advice to an agency on developing, implementing, and enforcing policies and procedures to prevent or reduce the risk of fraudulent or wrongful acts within the agency.

(8) Recommend legislation to the governor and general assembly to strengthen public integrity laws.

(9) Annually submit a report to the legislative council detailing the inspector general's activities. The report must be in an electronic format under IC 5-14-6.

**Sec. 4. To carry out the duties described in section 3 of this chapter, the inspector general has the following powers:**

(1) As part of an investigation, the inspector general may:

(A) administer oaths;

(B) examine witnesses under oath;

(C) issue subpoenas and subpoenas duces tecum; and

(D) examine the records, reports, audits, reviews, papers, books, recommendations, contracts, correspondence, or any other documents maintained by an agency.

(2) The inspector general may apply to a circuit or superior court for an order holding an individual in contempt of court if the individual refuses to give sworn testimony under a subpoena issued by the inspector general or otherwise disobeys a subpoena or subpoena duces tecum issued by the inspector general.

(3) The inspector general shall prepare a report summarizing the results of every investigation. The report is confidential in accordance with section 8 of this chapter.

(4) If the attorney general has elected not to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained, the inspector general may file a civil action for the recovery of the funds in accordance with section 6 of this chapter.

(5) The inspector general may prosecute a criminal matter as a special prosecuting attorney or special deputy prosecuting attorney in accordance with:

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(A) section 7 of this chapter; or

(B) IC 33-39-2-6.

**Sec. 5. (a)** The inspector general shall adopt rules under IC 4-22-2 establishing a code of ethics for the conduct of state business. The code of ethics must be consistent with Indiana law.

**(b)** If the inspector general investigates and determines that there is specific and credible evidence that a current or former employee, a current or former state officer, a current or former special state appointee, or a person who has or had a business relationship with an agency has violated the code of ethics, the inspector general may:

**(1)** file a complaint with the ethics commission and represent the state in a public proceeding before the ethics commission as prescribed in IC 4-2-6-4; or

**(2)** file a complaint with the ethics commission and negotiate an agreed settlement for approval by the ethics commission according to its rules.

**Sec. 6. (a)** This section applies if the inspector general finds evidence of misfeasance, malfeasance, nonfeasance, misappropriation, fraud, or other misconduct that has resulted in a financial loss to the state or in an unlawful benefit to an individual in the conduct of state business.

**(b)** If the inspector general finds evidence described in subsection (a), the inspector general shall certify a report of the matter to the attorney general and provide the attorney general with any relevant documents, transcripts, or written statements. Not later than one hundred eighty (180) days after receipt of the report from the inspector general, the attorney general shall do one **(1)** of the following:

**(1)** File a civil action (including an action upon a state officer's official bond) to secure for the state the recovery of funds misappropriated, diverted, missing, or unlawfully gained. Upon request of the attorney general, the inspector general shall assist the attorney general in the investigation, preparation, and prosecution of the civil action.

**(2)** Inform the inspector general that the attorney general does not intend to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained. If the attorney general elects not to file a civil action, the attorney general shall return to the inspector general all documents and files initially provided by the inspector general.

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(3) Inform the inspector general that the attorney general is diligently investigating the matter and after further investigation may file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained. However, if more than three hundred sixty-five (365) days have passed since the inspector general certified the report to the attorney general, the attorney general loses the authority to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained and shall return to the inspector general all documents and files initially provided by the inspector general.

(c) If the inspector general has found evidence described in subsection (a) and reported to the attorney general under subsection (b) and:

- (1) the attorney general has elected under subsection (b)(2) not to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained; or
- (2) under subsection (b)(3) more than three hundred sixty-five (365) days have passed since the inspector general certified the report to the attorney general under subsection (b) and the attorney general has not filed a civil action;

the inspector general may file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained.

(d) If the inspector general has found evidence described in subsection (a), the inspector general may institute forfeiture proceedings under IC 34-24-2 in a court having jurisdiction in a county where property derived from or realized through the misappropriation, diversion, disappearance, or unlawful gain of state funds may be located, unless a prosecuting attorney has already instituted forfeiture proceedings against that property.

Sec. 7. (a) If the inspector general discovers evidence of criminal activity, the inspector general shall certify to the appropriate prosecuting attorney the following information:

- (1) The identity of any person who may be involved in the criminal activity.
- (2) The criminal statute that the inspector general believes has been violated.

In addition, the inspector general shall provide the prosecuting attorney with any relevant documents, transcripts, or written statements. If the prosecuting attorney decides to prosecute the crime described in the information certified to the prosecuting attorney, or any other related crimes, the inspector general shall

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cooperate with the prosecuting attorney in the investigation and prosecution of the case. Upon request of the prosecuting attorney, the inspector general may participate on behalf of the state in any resulting criminal trial.

(b) If:

(1) the prosecuting attorney to whom the inspector general issues a certification under subsection (a):

(A) is disqualified from investigating or bringing a criminal prosecution in the matter addressed in the certification;

(B) does not file an information or seek an indictment not later than one hundred eighty (180) days after the date on which the inspector general certified the information to the prosecuting attorney; or

(C) refers the case back to the inspector general; and

(2) the inspector general finds that there may be probable cause to believe that a person identified in a certification under subsection (a)(1) has violated a criminal statute identified in a certification under subsection (a)(2);

the inspector general may request that the governor recommend the inspector general be appointed as a special prosecuting attorney under subsection (h) so that the inspector general may prosecute the matter addressed in the certification.

(c) The governor may recommend the inspector general be appointed as a special prosecuting attorney if:

(1) one (1) of the conditions set forth in subsection (b)(1) relating to the prosecuting attorney is met; and

(2) the governor finds that the appointment of the inspector general as a special prosecuting attorney is in the best interests of justice.

(d) If the governor has recommended the appointment of the inspector general as a special prosecuting attorney, the inspector general shall file a notice with the chief judge of the court of appeals, stating:

(1) that the governor has recommended that the inspector general be appointed as a special prosecutor;

(2) the name of the county in which the crime that the inspector general intends to prosecute is alleged to have been committed; and

(3) that the inspector general requests the chief judge to assign a court of appeals judge to determine whether the inspector general should be appointed as a special prosecuting

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attorney.

Upon receipt of the notice, the chief judge of the court of appeals shall randomly select a judge of the court of appeals to determine whether the inspector general should be appointed as a special prosecuting attorney. The chief judge shall exclude from the random selection a judge who resided in the county in which the crime is alleged to have been committed at the time the judge was appointed to the court of appeals.

(e) The inspector general shall file a verified petition for appointment as a special prosecuting attorney with the court of appeals judge assigned under subsection (d). In the verified petition, the inspector general shall set forth why the inspector general should be appointed as a special prosecutor. The inspector general may support the verified petition by including relevant documents, transcripts, or written statements in support of the inspector general's position. The inspector general shall serve a copy of the verified petition, along with any supporting evidence, on the prosecuting attorney to whom the case was originally certified under subsection (a).

(f) The prosecuting attorney shall file a verified petition in support of or opposition to the inspector general's verified petition for appointment as a special prosecuting attorney not later than fifteen (15) days after receipt of the inspector general's verified petition for appointment as a special prosecuting attorney.

(g) Upon a showing of particularized need, the court of appeals judge may order the verified petitions filed by the inspector general and the prosecuting attorney to be confidential.

(h) After considering the verified petitions, the court of appeals judge may appoint the inspector general or a prosecuting attorney, other than the prosecuting attorney to whom the case was certified under this section, as a special prosecuting attorney if the judge finds that:

- (1) one (1) of the conditions set forth in subsection (b)(1) is met; and
- (2) appointment of a special prosecuting attorney is in the best interests of justice.

In making its determination under this subsection, the court of appeals judge shall consider only the arguments and evidence contained in the verified petitions.

(i) Except as provided in subsection (k), a special prosecuting attorney appointed under this section has the same powers as the prosecuting attorney of the county. However, the court of appeals

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judge shall:

- (1) limit the scope of the special prosecuting attorney's duties as a special prosecuting attorney to include only the investigation or prosecution of a particular case or particular grand jury investigation, including any matter that reasonably results from the investigation, prosecution, or grand jury investigation; and
- (2) establish for a time certain the length of the special prosecuting attorney's term.

If the special prosecuting attorney's investigation or prosecution acquires a broader scope or requires additional time to complete, the court of appeals judge may at any time increase the scope of the special prosecuting attorney's duties or establish a longer term for the special prosecuting attorney.

(j) An inspector general or prosecuting attorney appointed to serve as a special prosecuting attorney may appoint one (1) or more deputies who are licensed to practice law in Indiana to serve as a special deputy prosecuting attorney. A special deputy prosecuting attorney is subject to the same statutory restrictions and other restrictions imposed on the special prosecuting attorney by the court of appeals, but otherwise has the same powers as a deputy prosecuting attorney.

(k) An inspector general or prosecuting attorney appointed to serve as a special prosecuting attorney under this section may bring a criminal charge only after obtaining an indictment from a grand jury. An inspector general or prosecuting attorney appointed under this section to serve as a special prosecuting attorney may not bring a criminal charge by filing an information.

(l) The inspector general or a deputy inspector general who is licensed to practice law in Indiana may serve as a special deputy prosecuting attorney under IC 33-39-2-6.

(m) If the court of appeals appoints a prosecuting attorney to serve as a special prosecuting attorney under this section, the inspector general shall reimburse the prosecuting attorney for the reasonable expenses of investigating and prosecuting the case.

Sec. 8. (a) The identity of any individual who discloses in good faith to the inspector general information alleging a violation of a state or federal statute, rule, regulation, or ordinance is confidential and may not be disclosed to anyone other than the governor, the staff of the office of the inspector general, or an authority to whom the investigation is subsequently referred or certified, unless:

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(1) the inspector general makes a written determination that it is in the public interest to disclose the individual's identity; or

(2) the individual consents in writing to disclosure of the individual's identity.

(b) The investigative records of the inspector general may be kept confidential in whole or in part.

(c) This subsection does not apply to a person who is a party to an action brought by the inspector general. Information received by the inspector general is not required to be produced in the course of discovery unless ordered by a court after a showing of:

(1) particularized need; and

(2) proof that the information requested cannot be obtained from any other source.

(d) Except as provided in subsection (e), a person who knowingly or intentionally discloses:

(1) confidential information or records; or

(2) the identity of a person whose identity is confidential under subsection (a);

commits unlawful disclosure of confidential information, a Class A misdemeanor.

(e) A person may disclose confidential information or records or the identity of a person whose identity is confidential under subsection (a) if the governor authorizes the disclosure of this information in the public interest.

SECTION 15. IC 4-6-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The attorney general shall have charge of and direct the prosecution of all civil actions that are brought in the name of the state of Indiana or any state agency.

(b) In no instance under this section shall the state or a state agency be required to file a bond.

(c) This section does not affect the authority of prosecuting attorneys to prosecute civil actions.

(d) This section does not affect the authority of the inspector general to prosecute a civil action under IC 4-2-7-6 for the recovery of funds misappropriated, diverted, missing, or unlawfully gained.

SECTION 16. IC 4-13-1-4.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.2. In consultation with the inspector general and the state ethics commission, the department shall, subject to this chapter, adopt rules under IC 4-22-2 requiring a

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**person who lobbies the executive branch to register as an executive branch lobbyist.**

SECTION 17. IC 4-15-2-33 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 33. An appointing authority, ~~or his~~ **the appointing authority's** designee, **or the ethics commission** may, for disciplinary purposes, suspend without pay a regular employee ~~in his division of the service~~ for ~~such a~~ length of time as ~~he~~ **considers the appointing authority, the appointing authority's designee, or the ethics commission considers** appropriate, not exceeding thirty (30) days in any twelve (12) month period. With the approval of the director a regular employee may be suspended for a longer period pending the administrative investigation or trial of any charges against ~~him~~: **the employee**. If the outcome of the charges or trial of any charges is favorable to the employee, the appointing authority shall reimburse the employee any lost wages and benefits for the suspension period less any wages the employee might have earned during the suspension period from other employment.

SECTION 18. IC 4-15-2-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 34. An appointing authority, ~~or his~~ **the appointing authority's** designee, **or the ethics commission** may dismiss for cause any regular employee. ~~in his division of the service~~. No dismissal of a regular employee shall take effect, unless, at least thirty (30) days before the effective date of the dismissal, the appointing authority, ~~or his~~ **the appointing authority's** designee, **or the ethics commission** gives to the employee a written statement of the reasons for the dismissal and files a copy of the statement with the director. During the thirty (30) day notice period the employee shall be suspended without pay pending dismissal. The employee shall have an opportunity to file with the appointing authority **or the ethics commission** a written statement regarding the proposed dismissal, a copy of which shall be filed with the director. A regular employee who is dismissed shall have the right to appeal under section 35 **or 35.5** of this chapter.

SECTION 19. IC 4-15-2-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 35. **(a) This section does not apply to an employee who has been suspended or terminated by the ethics commission.**

**(b)** Any regular employee may file a complaint if ~~his~~ **the employee's** status of employment is involuntarily changed or if ~~he~~ **the employee** deems conditions of employment to be unsatisfactory. However, the complaint procedure shall be initiated as soon as possible after the occurrence of the act or condition complained of and in no

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event shall be initiated more than thirty (30) calendar days after the employee is notified of a change in ~~his~~ **the** status of employment or after an unsatisfactory condition of employment is created. Failure to initiate the complaint procedure within ~~such~~ **this** time period shall render the complaint procedure unavailable to the employee. The following complaint procedure shall be followed:

Step I: The complaint procedure shall be initiated by a discussion of the complaint by the employee and ~~his~~ **the employee's** immediate supervisor and, if a mutually satisfactory settlement has not been made within two (2) consecutive working days, ~~such~~ **the** complaint may be referred to Step II.

Step II: The complaint shall be reduced to writing and presented to the intermediate supervisor. If a mutually satisfactory settlement has not been reached within four (4) consecutive working days, such complaint may then be referred to the appointing authority.

Step III: The appointing authority or ~~his designated representative~~ **the appointing authority's designee** shall hold ~~such~~ **hearings a hearing, if necessary,** and conduct ~~such~~ **investigations as he deems whatever investigation the appointing authority or the appointing authority's designee considers** necessary to render a decision. ~~and shall make such~~ **The appointing authority or the appointing authority's designee must render a decision in writing within not later than ten (10) consecutive working business days from the date of the hearing, if applicable, or close of the investigation, whichever occurs later.**

~~Should~~ **If** the appointing authority or ~~his designated representative~~ **the appointing authority's designee does** not find in favor of the employee, the complaint may be submitted within fifteen (15) calendar days to the state personnel director. The director or ~~his~~ **the director's** designee shall review the complaint and render a decision ~~within not later than~~ **fifteen (15) calendar days after the director or the director's designee receives the complaint.** If the decision is not agreeable to the employee, an appeal may be submitted by the employee in writing to the commission ~~no~~ **not** later than fifteen (15) calendar days from the date the employee has been given notice of the action taken by the personnel director or ~~his~~ **the director's** designee. After submission of the appeal, the commission shall, prior to rendering its decision, grant the appealing employee and the appointing authority a public hearing, with the right to be represented and to present evidence. With respect to all appeals, the commission shall render its decision within thirty (30) days after the date of the hearing on the appeal. If the commission finds that the action against the

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employee was taken on the basis of politics, religion, sex, age, race, or because of membership in an employee organization, the employee shall be reinstated ~~to his position~~ without loss of pay. In all other cases the appointing authority shall follow the recommendation of the commission, which may include reinstatement and payment of salary or wages lost by the employee, which may be mitigated by any wages the employee earned from other employment during a dismissed or suspended period.

If the recommendation of the commission is not agreeable to the employee, the employee, within fifteen (15) calendar days from receipt of the commission recommendation, may elect to submit the complaint to arbitration. The cost of arbitration shall be shared equally by the employee and the state of Indiana. The commissioner of labor shall prepare a list of three (3) impartial individuals trained in labor relations, and from this list each party shall strike one (1) name. The remaining arbitrator shall consider the issues which were presented to the commission and shall afford the parties a public hearing with the right to be represented and to present evidence. The arbitrator's findings and recommendations shall be binding on both parties and shall immediately be instituted by the commission.

SECTION 20. IC 4-15-2-35.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 35.5. (a) This section applies only to an employee who has been suspended or terminated by the ethics commission.**

**(b) An employee who has been suspended or terminated by the ethics commission may request that the ethics commission reconsider its decision by filing a written petition for reconsideration with the ethics commission not later than fifteen (15) days after the date on which the employee was suspended or terminated. The employee must include in the petition for reconsideration a concise statement of the reasons that the employee believes that the termination or suspension was erroneous.**

**(c) After receipt of the petition for reconsideration, the ethics commission shall set the matter for hearing. At the hearing, the employee is entitled to the due process protections of IC 4-21.5, including the right to:**

- (1) be represented by counsel;**
- (2) present relevant evidence; and**
- (3) cross-examine opposing witnesses.**

**(d) The ethics commission shall rule on the petition for**

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reconsideration not later than thirty (30) days from the date of the hearing. The ethics commission may:

- (1) affirm its decision to suspend or terminate the employee;
- (2) modify its decision to suspend or terminate the employee by:

- (A) reducing the term of suspension; or
- (B) vacating its order for termination and imposing a term of suspension; or

- (3) vacate its order to suspend or terminate the employee.

(e) If the ethics commission vacates its order to suspend or terminate the employee under subsection (d)(3), the ethics commission may order the payment of all or part of the wages lost by the employee during the period of suspension or termination.

(f) Unless the ethics commission orders otherwise, the pendency of a petition for reinstatement does not stay the order for termination or suspension.

(g) An employee who has filed a petition for reconsideration may not file a second or subsequent petition for reconsideration.

(h) If the ruling by the ethics commission on the employee's petition for reconsideration is not agreeable to the employee, the employee may submit an appeal in writing to the commission not later than fifteen (15) calendar days after the date of the ruling by the ethics commission on the petition for reconsideration. After submission of the appeal, the commission shall, before rendering its decision, grant the appealing employee and the ethics commission a public hearing, with the right to be represented and to present evidence. With respect to all appeals, the commission shall render its decision within thirty (30) days after the date of the hearing on the appeal. If the commission finds that the action against the employee was taken on the basis of politics, religion, sex, age, race, or because of membership in an employee organization, the employee shall be reinstated without loss of pay. In all other cases the ethics commission shall follow the recommendation of the commission, which may include reinstatement and payment of salary or wages lost by the employee, which may be mitigated by any wages the employee earned from other employment during a period when the employee was dismissed or suspended.

(i) If the recommendation of the commission under subsection (h) is not agreeable to the employee, not later than fifteen (15) calendar days after receipt of commission's recommendation, the employee may elect to submit the complaint to arbitration. The

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cost of arbitration shall be shared equally by the employee and the state of Indiana. The commissioner of labor shall prepare a list of three (3) impartial individuals trained in labor relations, and from this list each party shall strike one (1) name. The remaining arbitrator shall consider the issues that were presented to the commission and shall afford the parties a public hearing with the right to be represented and to present evidence. The arbitrator's findings and recommendations shall be binding on both parties and shall immediately be instituted by the commission.

SECTION 21. IC 4-15-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Any employee may report in writing the existence of:

- (1) a violation of a federal law or regulation;
- (2) a violation of a state law or rule;
- (3) a violation of an ordinance of a political subdivision (as defined in IC 36-1-2-13); or
- (4) the misuse of public resources;

first to a supervisor or appointing authority, unless the supervisor or appointing authority is the person whom the employee believes is committing the violation or misuse of public resources. In that case, the employee may report the violation or misuse of public resources in writing to either the supervisor or appointing authority or to the state ethics commission and any official or agency entitled to receive a report from the state ethics commission under IC 4-2-6-4(b)(2)(G) or IC 4-2-6-4(b)(2)(H). If a good faith effort is not made to correct the problem within a reasonable time, the employee may submit a written report of the incident to any person, agency, or organization: **to a supervisor or to the inspector general.**

(b) For having made a report under subsection (a), the employee making the report may not:

- (1) be dismissed from employment;
- (2) have salary increases or employment related benefits withheld;
- (3) be transferred or reassigned;
- (4) be denied a promotion the employee otherwise would have received; or
- (5) be demoted.

(c) Notwithstanding subsections (a) and (b), an employee must make a reasonable attempt to ascertain the correctness of any information to be furnished and may be subject to disciplinary actions for knowingly furnishing false information, including suspension or dismissal, as determined by the employee's appointing authority, ~~or the~~

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appointing authority's designee, **or the ethics commission**. However, any state employee disciplined under this subsection is entitled to process an appeal of the disciplinary action under the procedure as set forth in IC 4-15-2-34 ~~and IC 4-15-2-35~~ **through IC 4-15-2-35.5**.

(d) An employer who **knowingly or intentionally** violates this section commits a Class A ~~infraction~~ **misdemeanor**.

SECTION 22. IC 4-21.5-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) To qualify for review of a personnel action to which IC 4-15-2 applies, a person must comply with IC 4-15-2-35 **or IC 4-15-2-35.5**. To qualify for review of any other order described in section 4, 5, or 6 of this chapter, a person must petition for review in a writing that does the following:

- (1) States facts demonstrating that:
  - (A) the petitioner is a person to whom the order is specifically directed;
  - (B) the petitioner is aggrieved or adversely affected by the order; or
  - (C) the petitioner is entitled to review under any law.
- (2) Includes, with respect to determinations of notice of program reimbursement and audit findings described in section 6(a)(3) and 6(a)(4) of this chapter, a statement of issues that includes:
  - (A) the specific findings, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning from which the provider is appealing;
  - (B) the reason the provider believes that the finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning was in error; and
  - (C) with respect to each finding, action, or determination of the office of Medicaid policy and planning or of a contractor of the office of Medicaid policy and planning, the statutes or rules that support the provider's contentions of error.

Not more than thirty (30) days after filing a petition for review under this section, and upon a finding of good cause by the administrative law judge, a person may amend the statement of issues contained in a petition for review to add one (1) or more additional issues.

- (3) Is filed:
  - (A) if an order described in section 4, 5, 6(a)(1), or 6(a)(2) of this chapter, with the ultimate authority for the agency issuing the order within fifteen (15) days after the person is given

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notice of the order or any longer period set by statute; or  
 (B) if a determination described in section 6(a)(3) or 6(a)(4)  
 of this chapter, with the office of Medicaid policy and  
 planning not more than one hundred eighty (180) days after  
 the hospital is provided notice of the determination.

The issuance of an amended notice of program reimbursement by  
 the office of Medicaid policy and planning does not extend the  
 time within which a hospital must file a petition for review from  
 the original notice of program reimbursement under clause (B),  
 except for matters that are the subject of the amended notice of  
 program reimbursement.

If the petition for review is denied, the petition shall be treated as a  
 petition for intervention in any review initiated under subsection (d).

(b) If an agency denies a petition for review under subsection (a)  
 and the petitioner is not allowed to intervene as a party in a proceeding  
 resulting from the grant of the petition for review of another person, the  
 agency shall serve a written notice on the petitioner that includes the  
 following:

- (1) A statement that the petition for review is denied.
- (2) A brief explanation of the available procedures and the time  
 limit for seeking administrative review of the denial under  
 subsection (c).

(c) An agency shall assign an administrative law judge to conduct  
 a preliminary hearing on the issue of whether a person is qualified  
 under subsection (a) to obtain review of an order when a person  
 requests reconsideration of the denial of review in a writing that:

- (1) states facts demonstrating that the person filed a petition for  
 review of an order described in section 4, 5, or 6 of this chapter;
- (2) states facts demonstrating that the person was denied review  
 without an evidentiary hearing; and
- (3) is filed with the ultimate authority for the agency denying the  
 review within fifteen (15) days after the notice required by  
 subsection (b) was served on the petitioner.

Notice of the preliminary hearing shall be given to the parties, each  
 person who has a pending petition for intervention in the proceeding,  
 and any other person described by section 5(d) of this chapter. The  
 resulting order must be served on the persons to whom notice of the  
 preliminary hearing must be given and include a statement of the facts  
 and law on which it is based.

(d) If a petition for review is granted, the petitioner becomes a party  
 to the proceeding and the agency shall assign the matter to an  
 administrative law judge or certify the matter to another agency for the

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assignment of an administrative law judge (if a statute transfers responsibility for a hearing on the matter to another agency). The agency granting the administrative review or the agency to which the matter is transferred may conduct informal proceedings to settle the matter to the extent allowed by law.

SECTION 23. IC 5-11-5.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

**Chapter 5.5. False Claims and Whistleblower Protection**

**Sec. 1. The following definitions apply throughout this chapter:**

(1) "Claim" means a request or demand for money or property that is made to a contractor, grantee, or other recipient if the state:

(A) provides any part of the money or property that is requested or demanded; or

(B) will reimburse the contractor, grantee, or other recipient for any part of the money or property that is requested or demanded.

(2) "Documentary material" means:

(A) the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, chart, or other document;

(B) a data compilation stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret the data compilations; and

(C) a product of discovery.

(3) "Investigation" means an inquiry conducted by an investigator to ascertain whether a person is or has been engaged in a violation of this chapter.

(4) "Person" includes a natural person, a corporation, a firm, an association, an organization, a partnership, a limited liability company, a business, or a trust.

(5) "Product of discovery" means the original or duplicate of:

(A) a deposition;

(B) an interrogatory;

(C) a document;

(D) a thing;

(E) a result of the inspection of land or other property; or

(F) an examination or admission;

that is obtained by any method of discovery in a judicial or an administrative proceeding of an adversarial nature. The term

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includes a digest, an analysis, a selection, a compilation, a derivation, an index, or another method of accessing an item listed in this subdivision.

(6) "State" means Indiana or any agency of state government. The term does not include a political subdivision.

Sec. 2. (a) This section does not apply to a claim, record, or statement concerning income tax (IC 6-3).

(b) A person who knowingly or intentionally:

- (1) presents a false claim to the state for payment or approval;
- (2) makes or uses a false record or statement to obtain payment or approval of a false claim from the state;
- (3) with intent to defraud the state, delivers less money or property to the state than the amount recorded on the certificate or receipt the person receives from the state;
- (4) with intent to defraud the state, authorizes issuance of a receipt without knowing that the information on the receipt is true;
- (5) receives public property as a pledge of an obligation on a debt from an employee who is not lawfully authorized to sell or pledge the property;
- (6) makes or uses a false record or statement to avoid an obligation to pay or transmit property to the state;
- (7) conspires with another person to perform an act described in subdivisions (1) through (6); or
- (8) causes or induces another person to perform an act described in subdivisions (1) through (6);

is, except as provided in subsection (c), liable to the state for a civil penalty of at least five thousand dollars (\$5,000) and for up to three (3) times the amount of damages sustained by the state. In addition, a person who violates this section is liable to the state for the costs of a civil action brought to recover a penalty or damages.

(c) If the factfinder determines that the person who violated this section:

- (1) furnished state officials with all information known to the person about the violation not later than thirty (30) days after the date on which the person obtained the information;
- (2) fully cooperated with the investigation of the violation; and
- (3) did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials;

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the person is liable for a penalty of not less than two (2) times the amount of damages that the state sustained because of the violation. A person who violates this section is also liable to the state for the costs of a civil action brought to recover a penalty or damages.

**Sec. 3. (a) The:**

- (1) attorney general; and
- (2) inspector general;

have concurrent jurisdiction to investigate a violation of section 2 of this chapter.

(b) If the attorney general discovers a violation of section 2 of this chapter, the attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(c) If the inspector general discovers a violation of section 2 of this chapter, the inspector general shall certify this finding to the attorney general. The attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(d) If the attorney general or the inspector general is served by a person who has filed a civil action under section 4 of this chapter, the attorney general has the authority to intervene in that action as set forth in section 4 of this chapter.

(e) If the attorney general:

- (1) is disqualified from investigating a possible violation of section 2 of this chapter;
- (2) is disqualified from bringing a civil action concerning a possible violation of section 2 of this chapter;
- (3) is disqualified from intervening in a civil action brought under section 4 of this chapter concerning a possible violation of section 2 of this chapter;
- (4) elects not to bring a civil action concerning a possible violation of section 2 of this chapter; or
- (5) elects not to intervene under section 4 of this chapter;

the attorney general shall certify the attorney general's disqualification or election to the inspector general.

(f) If the attorney general has certified the attorney general's disqualification or election not to bring a civil action or intervene in a case under subsection (e), the inspector general has authority to:

- (1) bring a civil action concerning a possible violation of section 2 of this chapter; or
- (2) intervene in a case under section 4 of this chapter.

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(g) The attorney general shall certify to the inspector general the attorney general's disqualification or election under subsection (e) in a timely fashion, and in any event not later than:

- (1) sixty (60) days after being served, if the attorney general has been served by a person who has filed a civil action under section 4 of this chapter; or
- (2) one hundred eighty (180) days before the expiration of the statute of limitations, if the attorney general has not been served by a person who has filed a civil action under section 4 of this chapter.

(h) A civil action brought under section 4 of this chapter may be filed in:

- (1) a circuit or superior court in Marion county; or
- (2) a circuit or superior court in the county in which a defendant or plaintiff resides.

(i) The state is not required to file a bond under this chapter.

Sec. 4. (a) A person may bring a civil action for a violation of section 2 of this chapter on behalf of the person and on behalf of the state. The action:

- (1) must be brought in the name of the state; and
- (2) may be filed in a circuit or superior court in:
  - (A) the county in which the person resides;
  - (B) the county in which a defendant resides; or
  - (C) Marion County.

(b) Except as provided in section 5 of this chapter, an action brought under this section may be dismissed only if:

- (1) the attorney general or the inspector general, if applicable, files a written motion to dismiss explaining why dismissal is appropriate; and
- (2) the court issues an order:
  - (A) granting the motion; and
  - (B) explaining the court's reasons for granting the motion.

(c) A person who brings an action under this section shall serve:

- (1) a copy of the complaint; and
- (2) a written disclosure that describes all relevant material evidence and information the person possesses;

on both the attorney general and the inspector general. The person shall file the complaint under seal, and the complaint shall remain under seal for at least one hundred twenty (120) days. The complaint shall not be served on the defendant until the court orders the complaint served on the defendant following the intervention or the election not to intervene of the attorney general

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or the inspector general. The state may elect to intervene and proceed with the action not later than one hundred twenty (120) days after it receives both the complaint and the written disclosure.

(d) For good cause shown, the attorney general or the inspector general may move the court to extend the time during which the complaint must remain under seal. A motion for extension may be supported by an affidavit or other evidence. The affidavit or other evidence may be submitted in camera.

(e) Before the expiration of the time during which the complaint is sealed, the attorney general or the inspector general may:

- (1) intervene in the case and proceed with the action, in which case the attorney general or the inspector general shall conduct the action; or
- (2) elect not to proceed with the action, in which case the person who initially filed the complaint may proceed with the action.

(f) The defendant in an action filed under this section is not required to answer the complaint until twenty-one (21) days after the complaint has been unsealed and served on the defendant.

(g) After a person has filed a complaint under this section, no person other than the attorney general or the inspector general may:

- (1) intervene; or
- (2) bring another action based on the same facts.

(h) If the person who initially filed the complaint:

- (1) planned and initiated the violation of section 2 of this chapter; or
- (2) has been convicted of a crime related to the person's violation of section 2 of this chapter;

upon motion of the attorney general or the inspector general, the court shall dismiss the person as a plaintiff.

Sec. 5. (a) If the attorney general or the inspector general intervenes in an action under section 4 of this chapter, the attorney general or the inspector general is responsible for prosecuting the action and is not bound by an act of the person who initially filed the complaint. The attorney general or the inspector general may move for a change of venue to Marion County if the attorney general or the inspector general files a motion for change of venue not later than ten (10) days after the attorney general or the inspector general intervenes. Except as provided in this section, the person who initially filed the complaint may continue as a party to the action.

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(b) The attorney general or the inspector general may dismiss the action after:

- (1) notifying the person who initially filed the complaint; and
- (2) the court has conducted a hearing at which the person who initially filed the complaint was provided the opportunity to be heard on the motion.

(c) The attorney general or the inspector general may settle the action if a court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable in light of the circumstances. Upon a showing of good cause, the court may:

- (1) conduct the settlement hearing in camera; or
- (2) lift all or part of the seal to facilitate the investigative process or settlement.

The court may consider an objection to the settlement brought by the person who initially filed the complaint, but is not bound by this objection.

(d) Upon a showing by the attorney general, the inspector general, or the defendant that unrestricted participation by the person who initially filed the complaint:

- (1) will interfere with the prosecution of the case by the attorney general or the inspector general; or
- (2) will involve the presentation of repetitious or irrelevant evidence, or evidence introduced for purposes of harassment;

the court may impose reasonable limitations on the person's participation, including a limit on the number of witnesses that the person may call, a limit to the amount and type of evidence that the person may introduce, a limit to the length of testimony that the person's witness may present, and a limit to the person's cross-examination of a witness.

(e) If the attorney general or the inspector general elects not to intervene in the action, the person who initially filed the complaint has the right to prosecute the action. Upon request, the attorney general or the inspector general shall be served with copies of all documents filed in the action and may obtain a copy of depositions and other transcripts at the state's expense.

(f) If the attorney general and the inspector general have elected not to intervene in an action in accordance with section 4 of this chapter, upon a showing of good cause, a court may permit either the attorney general or the inspector general to intervene at a later time. The attorney general may move to intervene at any time. If the attorney general has not moved to intervene, the inspector general may move to intervene by providing written notice to the

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attorney general of the inspector general's intent to intervene. If the attorney general does not move to intervene earlier than fifteen (15) days after receipt of the notice of intent to intervene, the inspector general may move to intervene. If the attorney general or the inspector general intervenes under this subsection, the attorney general or the inspector general is responsible for prosecuting the action as if the attorney general or the inspector general had intervened in accordance with section 4 of this chapter.

(g) If the attorney general or inspector general shows that a specific discovery action by the person who initially filed the complaint will interfere with the investigation or prosecution of a civil or criminal matter arising out of the same facts, the court may, following a hearing in camera, stay discovery for not more than sixty (60) days. After the court has granted a sixty (60) day stay, the court may extend the stay, following a hearing in camera, if it determines that the state has pursued the civil or criminal investigation with reasonable diligence and that a specific discovery action by the person who initially filed the complaint will interfere with the state's investigation or prosecution of the civil or criminal matter.

(h) A court may dismiss an action brought under this chapter to permit the attorney general or the inspector general to pursue its claim through an alternative proceeding, including an administrative proceeding or a proceeding brought in another jurisdiction. The person who initially filed the complaint has the same rights in the alternative proceedings as the person would have had in the original proceedings. A finding of fact or conclusion of law made in the alternative proceeding is binding on all parties to an action under this section once the determination made in the alternative proceeding is final under the rules, regulations, statutes, or law governing the alternative proceeding, or if the time for seeking an appeal or review of the determination made in the alternative proceeding has elapsed.

Sec. 6. (a) The person who initially filed the complaint is entitled to the following amounts if the state prevails in the action:

(1) Except as provided in subdivision (2), if the attorney general or the inspector general intervened in the action, the person is entitled to receive at least fifteen percent (15%) and not more than twenty-five percent (25%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

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(2) If the attorney general or the inspector general intervened in the action and the court finds that the evidence used to prosecute the action consisted primarily of specific information contained in:

- (A) a transcript of a criminal, a civil, or an administrative hearing;
- (B) a legislative, an administrative, or another public report, hearing, audit, or investigation; or
- (C) a news media report;

the person is entitled to receive not more than ten percent (10%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(3) If the attorney general or the inspector general did not intervene in the action, the person is entitled to receive at least twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(4) If the person who initially filed the complaint:

- (A) planned and initiated the violation of section 2 of this chapter; or
- (B) has been convicted of a crime related to the person's violation of section 2 of this chapter;

the person is not entitled to an amount under this section.

After conducting a hearing at which the attorney general or the inspector general and the person who initially filed the complaint may be heard, the court shall determine the specific amount to be awarded under this section to the person who initially filed the complaint. The award of reasonable attorney's fees plus an amount to cover the expenses and costs of bringing the action is an additional cost assessed against the defendant and may not be paid from the proceeds of the civil action.

(b) If:

- (1) the attorney general or the inspector general did not intervene in the action; and
- (2) the defendant prevails;

the court may award the defendant reasonable attorney's fees plus an amount to cover the expenses and costs of defending the action, if the court finds that the action is frivolous.

(c) The state is not liable for the expenses, costs, or attorney's fees of a party to an action brought under this chapter.

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**Sec. 7. (a) This section does not apply to an action brought by:**

- (1) the attorney general;**
- (2) the inspector general;**
- (3) a prosecuting attorney; or**
- (4) a state employee in the employee's official capacity.**

**(b) A court does not have jurisdiction over an action brought under section 4 of this chapter that is based on information discovered by a present or former state employee in the course of the employee's employment, unless:**

- (1) the employee, acting in good faith, has exhausted existing internal procedures for reporting and recovering the amount owed the state; and**
- (2) the state has failed to act on the information reported by the employee within a reasonable amount of time.**

**(c) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is brought by an incarcerated offender, including an offender incarcerated in another jurisdiction.**

**(d) A court does not have jurisdiction over an action brought under section 4 of this chapter against the state, a state officer, a judge (as defined in IC 33-23-11-7), a justice, a member of the general assembly, a state employee, or an employee of a political subdivision, if the action is based in information known to the state at the time the action was brought.**

**(e) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon an act that is the subject of a civil suit, a criminal prosecution, or an administrative proceeding in which the state is a party.**

**(f) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon information contained in:**

- (1) a transcript of a criminal, a civil, or an administrative hearing;**
- (2) a legislative, an administrative, or another public report, hearing, audit, or investigation; or**
- (3) a news media report;**

**unless the person bringing the action has direct and independent knowledge of the information that is the basis of the action, and the person bringing the action has voluntarily provided this information to the state.**

**Sec. 8. (a) An employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated**

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against in the terms and conditions of employment by the employee's employer because the employee:

- (1) objected to an act or omission described in section 2 of this chapter; or
- (2) initiated, testified, assisted, or participated in an investigation, an action, or a hearing under this chapter;

is entitled to all relief necessary to make the employee whole.

(b) Relief under this section may include:

- (1) reinstatement with the same seniority status the employee would have had but for the act described in subsection (a);
- (2) two (2) times the amount of back pay owed the employee;
- (3) interest on the back pay owed the employee; and
- (4) compensation for any special damages sustained as a result of the act described in subsection (a), including costs and expenses of litigation and reasonable attorney's fees.

(c) An employee may bring an action for the relief provided in this section in any court with jurisdiction.

**Sec. 9. (a)** A subpoena requiring the attendance of a witness at a trial or hearing conducted under this chapter may be served at any place in the state.

(b) A civil action under section 4 of this chapter is barred unless it is commenced:

- (1) not later than six (6) years after the date on which the violation is committed; or
- (2) not later than three (3) years after the date when facts material to the cause of action are discovered or reasonably should have been discovered by a state officer or employee who is responsible for addressing the false claim. However, an action is barred unless it is commenced not later than ten (10) years after the date on which the violation is committed.

(c) In a civil action brought under this chapter, the state is required to establish:

- (1) the essential elements of the offense; and
- (2) damages;

by a preponderance of the evidence.

(d) If a defendant has been convicted (including a plea of guilty or nolo contendere) of a crime involving fraud or a false statement, the defendant is estopped from denying the elements of the offense in a civil action brought under section 4 of this chapter that involves the same transaction as the criminal prosecution.

**Sec. 10. (a)** If the attorney general or the inspector general has reason to believe that a person may be in possession, custody, or

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control of documentary material or information relevant to an investigation involving a false claim, the attorney general or the inspector general may, before commencing a civil proceeding under this chapter, issue and serve a civil investigative demand requiring the person to do one (1) or more of the following:

- (1) Produce the documentary material for inspection and copying.
- (2) Answer an interrogatory in writing concerning the documentary material or information.
- (3) Give oral testimony concerning the documentary material or information.

(b) If a civil investigative demand is a specific demand for a product of discovery, the official issuing the civil investigative demand shall:

- (1) serve a copy of the civil investigative demand on the person from whom the discovery was obtained; and
- (2) notify the person to whom the civil investigative demand is issued of the date of service.

Sec. 11. (a) A civil investigative demand issued under this chapter must describe the conduct constituting a violation involving a false claim that is under investigation and the statute or rule that has been violated.

(b) If a civil investigative demand is for the production of documentary material, the civil investigative demand must:

- (1) describe each class of documentary material to be produced with sufficient specificity to permit the material to be fairly identified;
- (2) prescribe a return date for each class of documentary material that provides a reasonable period of time to assemble and make the material available for inspection and copying; and
- (3) identify the official to whom the material must be made available.

(c) If a civil investigative demand is for answers to written interrogatories, the civil investigative demand must:

- (1) set forth with specificity the written interrogatories to be answered;
- (2) prescribe the date by which answers to the written interrogatories must be submitted; and
- (3) identify the official to whom the answers must be submitted.

(d) If a civil investigative demand requires oral testimony, the

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**civil investigative demand must:**

- (1) prescribe a date, time, and place at which oral testimony will be given;**
- (2) identify the official who will conduct the examination and the custodian to whom the transcript of the examination will be submitted;**
- (3) specifically state that attendance and testimony are necessary to the conduct of the investigation;**
- (4) notify the person receiving the demand that the person has the right to be accompanied by an attorney and any other representative; and**
- (5) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry.**

**(e) A civil investigative demand that is a specific demand for a product of discovery may not be returned until at least twenty-one (21) days after a copy of the civil investigative demand has been served on the person from whom the discovery was obtained.**

**(f) The date prescribed for the giving of oral testimony under a civil investigative demand issued under this chapter must be a date that is not less than seven (7) days after the date on which the demand is received, unless the official issuing the demand determines that exceptional circumstances are present that require an earlier date.**

**(g) The official who issues a civil investigative demand may not issue more than one (1) civil investigative demand for oral testimony by the same person, unless:**

- (1) the person requests otherwise; or**
- (2) the official who issues a civil investigative demand, after conducting an investigation, notifies the person in writing that an additional civil investigative demand for oral testimony is necessary.**

**Sec. 12. (a) A civil investigative demand issued under this chapter may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if the material, answers, or testimony would be protected from disclosure under the standards applicable:**

- (1) to a subpoena or subpoena duces tecum issued by a court to aid in a grand jury investigation; or**
- (2) to a discovery request under the rules of trial procedure; to the extent that the application of these standards to a civil**

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investigative demand is consistent with the purposes of this chapter.

(b) A civil investigative demand that is a specific demand for a product of discovery supersedes any contrary order, rule, or statutory provision, other than this section, that prevents or restricts disclosure of the product of discovery. Disclosure of a product of discovery under a specific demand does not constitute a waiver of a right or privilege that the person making the disclosure may be otherwise entitled to invoke to object to discovery of trial preparation materials.

Sec. 13. (a) A civil investigative demand issued under this chapter may be served by an investigator or by any other person authorized to serve process.

(b) A civil investigative demand shall be served in accordance with the rules of trial procedure. A court having jurisdiction over a person not located in the state has the same authority to enforce compliance with this chapter as the court has over a person located in the state.

Sec. 14. (a) The production of documentary material in response to a civil investigative demand served under this chapter shall be made in accordance with Trial Rule 34.

(b) Each interrogatory in a civil investigative demand served under this chapter shall be answered in accordance with Trial Rule 33.

(c) The examination of a person under a civil investigative demand for oral testimony served under this chapter shall be conducted in accordance with Trial Rule 30.

Sec. 15. (a) The official who issued the civil investigative demand is the custodian of the documentary material, answers to interrogatories, and transcripts of oral testimony received under this chapter.

(b) An investigator who receives documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the official who issued the civil investigative demand. The official shall take physical possession of the material, answers, or transcripts and is responsible for the use made of them and for the return of documentary material.

(c) The official who issued the civil investigative demand may make copies of documentary material, answers to interrogatories, or transcripts of oral testimony as required for official use by the attorney general, the inspector general, or the state police. The material, answers, or transcripts may be used in connection with

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the taking of oral testimony under this chapter.

(d) Except as provided in subsection (e), documentary material, answers to interrogatories, or transcripts of oral testimony, while in the possession of the official who issued the civil investigative demand, may not be made available for examination to any person other than:

- (1) the attorney general or designated personnel of the attorney general's office;
- (2) the inspector general or designated personnel of the inspector general's office; or
- (3) an officer of the state police who has been authorized by the official who issued the civil investigative demand.

(e) The restricted availability of documentary material, answers to interrogatories, or transcripts of oral testimony does not apply:

- (1) if the person who provided:
  - (A) the documentary material, answers to interrogatories, or oral testimony; or
  - (B) a product of discovery that includes documentary material, answers to interrogatories, or oral testimony; consents to disclosure;
- (2) to the general assembly or a committee or subcommittee of the general assembly; or
- (3) to a state agency that requires the information to carry out its statutory responsibility.

Documentary material, answers to interrogatories, or transcripts of oral testimony requested by a state agency may be disclosed only under a court order finding that the state agency has a substantial need for the use of the information in carrying out its statutory responsibility.

(f) While in the possession of the official who issued the civil investigative demand, documentary material, answers to interrogatories, or transcripts of oral testimony shall be made available to the person, or to the representative of the person who produced the material, answered the interrogatories, or gave oral testimony. The official who issued the civil investigative demand may impose reasonable conditions upon the examination of use of the documentary material, answers to interrogatories, or transcripts of oral testimony.

(g) The official who issued the civil investigative demand and any attorney employed in the same office as the official who issued the civil investigative demand may use the documentary material, answers to interrogatories, or transcripts of oral testimony in

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connection with a proceeding before a grand jury, a court, or an agency. Upon the completion of the proceeding, the attorney shall return to the official who issued the civil investigative demand any documentary material, answers to interrogatories, or transcripts of oral testimony that are not under the control of the grand jury, court, or agency.

(h) Upon written request of a person who produced documentary material in response to a civil investigative demand, the official who issued the civil investigative demand shall return any documentary material in the official's possession to the person who produced documentary material, if:

- (1) a proceeding before a grand jury, a court, or an agency involving the documentary material has been completed; or
- (2) a proceeding before a grand jury, a court, or an agency involving the documentary material has not been commenced within a reasonable time after the completion of the investigation.

The official who issued the civil investigative demand is not required to return documentary material that is in the custody of a grand jury, a court, or an agency.

Sec. 16. (a) A person who has failed to comply with a civil investigative demand is subject to sanctions under Trial Rule 37 to the same extent as a person who has failed to cooperate in discovery.

(b) A person who objects to a civil investigative demand issued under this chapter may seek a protective order in accordance with Trial Rule 26(C).

Sec. 17. Documentary material, answers to written interrogatories, or oral testimony provided in response to a civil investigative demand issued under this chapter are confidential.

Sec. 18. Proceedings under this chapter are governed by the Indiana Rules of Trial Procedure, unless the Indiana Rules of Trial Procedure are inconsistent with this chapter.

SECTION 24. IC 5-22-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) **Except as provided in subsection (b)**, this article does not apply to the following types of activities:

- (1) A contract between governmental bodies except for a contract authorized under this article.
- (2) A public works project.
- (3) A collective bargaining agreement between a governmental body and its employees.

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- (4) The employment relationship between a governmental body and an employee of the governmental body.
- (5) An investment of public funds.
- (6) A contract between a governmental body and a body corporate and politic.
- (7) A contract for social services.
- (8) A contract with a body corporate and politic.**
- (b) IC 5-22-3-7 applies to any:**
  - (1) contract;**
  - (2) project;**
  - (3) agreement;**
  - (4) employment relationship; or**
  - (5) investment;**

**described in subsection (a).**

SECTION 25. IC 5-22-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. **Except as otherwise provided**, the definitions in this chapter apply throughout this article.

SECTION 26. IC 5-22-2-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.3. "Affiliate" means a business entity that effectively controls or is controlled by a contractor or is associated with a contractor under common ownership or control, whether by shareholdings or other means, including a subsidiary, parent, or sibling of a contractor.**

SECTION 27. IC 5-22-3-7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. (a) This section applies to every use of funds by a governmental body. However, this section does not apply to a contract in which one (1) party is a political subdivision, including a body corporate and politic created by or authorized by a political subdivision.**

**(b) A prospective contractor may not contract with a governmental body unless the prospective contractor includes the following certifications as terms of the contract with the governmental body:**

- (1) The contractor and any principals of the contractor certify that:**
  - (A) the contractor, except for de minimis and nonsystematic violations, has not violated the terms of:**
    - (i) IC 24-4.7;**
    - (ii) IC 24-5-12; or**

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(iii) IC 24-5-14;

in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) the contractor will not violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law.

(2) The contractor and any principals of the contractor certify that an affiliate or principal of the contractor and any agent acting on behalf of the contractor or on behalf of an affiliate or principal of the contractor:

(A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC 24-4.7 for the duration of the contract, even if IC 24-4.7 is preempted by federal law.

(c) If a certification in subsection (b) concerning compliance with IC 24-4.7, IC 24-5-12, or IC 24-5-14 is materially false or if the contractor, an affiliate or a principal of the contractor, or an agent acting on behalf of the contractor or an affiliate or a principal of the contractor violates the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law, the attorney general may bring a civil action in the circuit or superior court of Marion County to:

(1) void a contract under this section, subject to subsection (d); and

(2) obtain other proper relief.

However, a contractor is not liable under this section if the contractor or an affiliate of the contractor acquires another business entity that violated the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14 within the preceding three hundred sixty-five (365) days before the date of the acquisition if the acquired business entity ceases violating IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law, as of the date of the acquisition.

(d) If:

(1) the attorney general notifies the contractor, department of administration, and budget agency in writing of the intention of the attorney general to void a contract; and

(2) the attorney general does not receive a written objection from the department of administration or budget agency, sent

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to both the attorney general and the contractor, within thirty (30) days of the notice;

a contract between a contractor and a governmental body is voidable at the election of the attorney general in a civil action brought under subsection (c). If an objection of the department of administration or the budget agency is submitted under subdivision (2), the contract that is the subject of the objection is not voidable at the election of the attorney general unless the objection is rescinded or withdrawn by the department of administration or the budget agency.

(e) If the attorney general establishes in a civil action that a contractor is knowingly, intentionally, or recklessly liable under subsection (c), the contractor is prohibited from entering into a contract with a governmental body for three hundred sixty-five (365) days after the date on which the contractor exhausts appellate remedies.

(f) In addition to any remedy obtained in a civil action brought under this section, the attorney general may obtain the following:

(1) All money the contractor obtained through each telephone call made in violation of the terms of IC 24-4.7, IC 24-5-12, or IC 24-5-14, even if IC 24-4.7 is preempted by federal law.

(2) The attorney general's reasonable expenses incurred in:

(A) investigation; and

(B) maintaining the civil action.

SECTION 28. IC 10-11-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this chapter, "law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders. **The term includes the office of the inspector general.**

SECTION 29. IC 10-13-3-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) As used in this chapter, "law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders.

(b) The term includes:

(1) the office of the attorney general; **and**

(2) **the office of the inspector general.**

SECTION 30. IC 15-1.5-10.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) The trustees shall recommend an individual to be employed as executive director of the barn, subject to the approval of the governor. If the governor

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approves an individual recommended by the trustees, the trustees may employ the individual as executive director. If the governor does not approve an individual recommended by the trustees, the trustees shall submit another recommendation to the governor.

(b) The executive director employed under this section:

- (1) is the chief administrative officer of the barn; and
- (2) shall implement the policies of the trustees.

(c) The trustees may delegate any of the trustees' powers to the executive director. The trustees may make a delegation under this subsection through a resolution adopted by the trustees.

(d) ~~Notwithstanding IC 4-2-6-5,~~ The compensation for the executive director and other employees of the trustees may be paid in full or in part by the nonprofit entity established under section 10 of this chapter.

SECTION 31. IC 16-41-11-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) A person who believes that this chapter or rules adopted under this chapter have been violated may file a complaint with the state department. A complaint must be in writing unless the violation complained of constitutes an emergency. The state department shall reduce an oral complaint to writing. The state department shall maintain the confidentiality of the person who files the complaint.

(b) The state department shall promptly investigate all complaints received under this section.

(c) The state department shall not disclose the name or identifying characteristics of the person who files a complaint under this section unless:

- (1) the person consents in writing to the disclosure; or
- (2) the investigation results in an administrative or judicial proceeding and disclosure is ordered by the administrative law judge or the court.

(d) The state department shall give a person who files a complaint under this section the opportunity to withdraw the complaint before disclosure.

(e) An employee must make a reasonable attempt to ascertain the correctness of any information to be furnished and may be subject to disciplinary actions for knowingly furnishing false information, including suspension or dismissal, as determined by the employer **or the ethics commission**. However, an employee disciplined under this subsection is entitled to process an appeal of the disciplinary action under any procedure otherwise available to the employee by employment contract, collective bargaining agreement, or, if the employee is an employee of the state, a rule as set forth in IC 4-15-2-34

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~~and IC 4-15-2-35.~~ through IC 4-15-2-35.5.

(f) The employer of an employee who files a complaint in good faith with the state department under this section may not, solely in retaliation for filing the complaint, do any of the following:

- (1) Dismiss the employee.
- (2) Withhold salary increases or employment related benefits from the employee.
- (3) Transfer or reassign the employee.
- (4) Deny a promotion that the employee would have received.
- (5) Demote the employee.

SECTION 32. IC 24-4.7-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. A telephone solicitor who fails to comply with any provision of IC 24-4.7-4 commits a deceptive act that is actionable by the attorney general under this chapter. **In addition, a contractor who contracts or seeks to contract with the state:**

- (1) may be prohibited from contracting with the state; or**
- (2) may have an existing contract with the state voided;**

**if the contractor, an affiliate or principal of the contractor, or any agent acting on behalf of the contractor or an affiliate or principal of the contractor does not or has not complied with the terms of this article, even if this article is preempted by federal law.**

SECTION 33. IC 24-5-0.5-4, AS AMENDED BY SEA 509-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person relying upon an uncured or incurable deceptive act may bring an action for the damages actually suffered as a consumer as a result of the deceptive act **or five hundred dollars (\$500), whichever is greater. The court may increase damages for a willful deceptive act in an amount that does not exceed the greater of:**

- (1) three (3) times the actual damages of the consumer suffering the loss; or**
- (2) one thousand dollars (\$1,000).**

**Except as provided in subsection (j), the court may award reasonable attorney fees to the party that prevails in an action under this subsection. This subsection does not apply to a consumer transaction in real property, including a claim or action involving a construction defect (as defined in IC 32-27-3-1(5)) brought against a construction professional (as defined in IC 32-27-3-1(4)), except for purchases of time shares and camping club memberships. This subsection also does not apply to a violation of IC 24-4.7, IC 24-5-12, or IC 24-5-14. Actual damages awarded to a person under**

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this section have priority over any civil penalty imposed under this chapter.

(b) Any person who is entitled to bring an action under subsection (a) on the person's own behalf against a supplier for damages for a deceptive act may bring a class action against such supplier on behalf of any class of persons of which that person is a member and which has been damaged by such deceptive act, subject to and under the Indiana Rules of Trial Procedure governing class actions, except as herein expressly provided. **Except as provided in subsection (j),** the court may award reasonable attorney fees to the party that prevails in a class action under this subsection, provided that such fee shall be determined by the amount of time reasonably expended by the attorney and not by the amount of the judgment, although the contingency of the fee may be considered. Any money or other property recovered in a class action under this subsection which cannot, with due diligence, be restored to consumers within one (1) year after the judgment becomes final shall be returned to the party depositing the same. This subsection does not apply to a consumer transaction in real property, except for purchases of time shares and camping club memberships. Actual damages awarded to a class have priority over any civil penalty imposed under this chapter.

(c) The attorney general may bring an action to enjoin a deceptive act. However, the attorney general may seek to enjoin patterns of incurable deceptive acts with respect to consumer transactions in real property. In addition, the court may:

- (1) issue an injunction;
- (2) order the supplier to make payment of the money unlawfully received from the aggrieved consumers to be held in escrow for distribution to aggrieved consumers; ~~and~~
- (3) order the supplier to pay to the state the reasonable costs of the attorney general's investigation and prosecution related to the action; **and**
- (4) provide for the appointment of a receiver.**

(d) In an action under subsection (a), (b), or (c), the court may void or limit the application of contracts or clauses resulting from deceptive acts and order restitution to be paid to aggrieved consumers.

(e) In any action under subsection (a) or (b), upon the filing of the complaint or on the appearance of any defendant, claimant, or any other party, or at any later time, the trial court, the supreme court, or the court of appeals may require the plaintiff, defendant, claimant, or any other party or parties to give security, or additional security, in such sum as the court shall direct to pay all costs, expenses, and

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disbursements that shall be awarded against that party or which that party may be directed to pay by any interlocutory order by the final judgment or on appeal.

(f) Any person who violates the terms of an injunction issued under subsection (c) shall forfeit and pay to the state a civil penalty of not more than fifteen thousand dollars (\$15,000) per violation. For the purposes of this section, the court issuing an injunction shall retain jurisdiction, the cause shall be continued, and the attorney general acting in the name of the state may petition for recovery of civil penalties. Whenever the court determines that an injunction issued under subsection (c) has been violated, the court shall award reasonable costs to the state.

(g) If a court finds any person has knowingly violated section 3 or 10 of this chapter, the attorney general, in an action pursuant to subsection (c), may recover from the person on behalf of the state a civil penalty of a fine not exceeding five ~~hundred thousand~~ dollars ~~(\$500)~~ **(\$5,000)** per violation.

(h) An elderly person relying upon an uncured or incurable deceptive act, including an act related to hypnotism, may bring an action to recover treble damages, if appropriate.

**(i) An offer to cure is:**

**(1) not admissible as evidence in a proceeding initiated under this section unless the offer to cure is delivered by a supplier to the consumer or a representative of the consumer before the supplier files the supplier's initial response to a complaint; and**

**(2) only admissible as evidence in a proceeding initiated under this section to prove that a supplier is not liable for attorney's fees under subsection (j).**

**If the offer to cure is timely delivered by the supplier, the supplier may submit the offer to cure as evidence to prove in the proceeding in accordance with the Indiana Rules of Trial Procedure that the supplier made an offer to cure.**

**(j) A supplier may not be held liable for the attorney's fees and court costs of the consumer that are incurred following the timely delivery of an offer to cure as described in subsection (i) unless the actual damages awarded, not including attorney's fees and costs, exceed the value of the offer to cure.**

SECTION 34. IC 24-5-12-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 23. A seller who fails to comply with any provision of:

**(1) this chapter; or**



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**(2) IC 24-4.7;**

commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and is subject to the penalties set forth in IC 24-5-0.5. **An action for a violation of IC 24-4.7 may be brought under IC 24-5-0.5-4(c) or IC 24-4.7-5.** An action by the attorney general for a violation of this chapter **or IC 24-4.7** may be brought in the circuit or superior court of Marion County.

SECTION 35. IC 24-8-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Notice may be delivered by any of the following methods:

- (1) Hand.
- (2) Mail.
- (3) Newspaper.
- (4) Other periodical.
- (5) Electronic mail or any other form of electronic, digital, or Internet based communication.**

SECTION 36. IC 27-2-19-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders. **The term includes the office of the inspector general.**

SECTION 37. IC 33-39-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) This section does not apply to a deputy prosecuting attorney appointed by a prosecuting attorney or **to a special prosecutor. appointed by a court.**

(b) To be eligible to hold office as a prosecuting attorney, a person must be a resident of the judicial circuit that the person serves.

SECTION 38. IC 33-39-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) Special prosecutors may be appointed **only** under this section **or in accordance with IC 4-2-7-7.**

(b) A circuit or superior court judge:

- (1) shall appoint a special prosecutor if:
  - (A) any person other than the prosecuting attorney or the prosecuting attorney's deputy files a verified petition requesting the appointment of a special prosecutor; and
  - (B) the prosecuting attorney agrees that a special prosecutor is needed;
- (2) may appoint a special prosecutor if:
  - (A) a person files a verified petition requesting the appointment of a special prosecutor; and

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- (B) the court, after:
  - (i) notice is given to the prosecuting attorney; and
  - (ii) an evidentiary hearing is conducted at which the prosecuting attorney is given an opportunity to be heard;
 finds by clear and convincing evidence that the appointment is necessary to avoid an actual conflict of interest or there is probable cause to believe that the prosecutor has committed a crime;
- (3) may appoint a special prosecutor if:
  - (A) the prosecuting attorney files a petition requesting the court to appoint a special prosecutor; and
  - (B) the court finds that the appointment is necessary to avoid the appearance of impropriety; and
- (4) may appoint a special prosecutor if:
  - (A) an elected public official, who is a defendant in a criminal proceeding, files a verified petition requesting a special prosecutor within ten (10) days after the date of the initial hearing; and
  - (B) the court finds that the appointment of a special prosecutor is in the best interests of justice.
- (c) Each person appointed to serve as a special prosecutor:
  - (1) must consent to the appointment; and
  - (2) must be:
    - (A) the prosecuting attorney or a deputy prosecuting attorney in a county other than the county in which the person is to serve as special prosecutor; or
    - (B) except as provided in subsection (d), a senior prosecuting attorney.
- (d) A senior prosecuting attorney may be appointed in the county in which the senior prosecuting attorney previously served if the court finds that an appointment under this subsection would not create the appearance of impropriety.
- (e) A person appointed to serve as a special prosecutor has the same powers as the prosecuting attorney of the county. However, the appointing judge shall limit scope of the special prosecutor's duties to include only the investigation or prosecution of a particular case or particular grand jury investigation.
- (f) The court shall establish the length of the special prosecutor's term. If the target of an investigation by the special prosecutor is a public servant (as defined in IC 35-41-1-24), the court shall order the special prosecutor to file a report of the investigation with the court at the conclusion of the investigation. The report is a public record.

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(g) If the special prosecutor is not regularly employed as a full-time prosecuting attorney or full-time deputy prosecuting attorney, the compensation for the special prosecutor's services:

- (1) shall be paid to the special prosecutor from the unappropriated funds of the appointing county; and
- (2) may not exceed:
  - (A) a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit; and
  - (B) travel expenses and reasonable accommodation expenses actually incurred.

(h) If the special prosecutor is regularly employed as a full-time prosecuting attorney or deputy prosecuting attorney, the compensation for the special prosecutor's services:

- (1) shall be paid out of the appointing county's unappropriated funds to the treasurer of the county in which the special prosecutor regularly serves; and
- (2) must include a per diem equal to the regular salary of a full-time prosecuting attorney of the appointing circuit, travel expenses, and reasonable accommodation expenses actually incurred.

(i) The combination of:

- (1) the compensation paid to a senior prosecuting attorney under this chapter; and
- (2) retirement benefits that the person appointed as a senior prosecuting attorney is receiving or entitled to receive;

may not exceed the minimum compensation to which a full-time prosecuting attorney is entitled under IC 33-39-6-5.

(j) A senior prosecuting attorney appointed under this chapter may not be compensated as senior prosecuting attorney for more than one hundred (100) calendar days in total during a calendar year.

SECTION 39. IC 33-39-2-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6. A prosecuting attorney may appoint the inspector general or a deputy inspector general who is licensed to practice law in Indiana as a special deputy prosecuting attorney to assist in any criminal proceeding involving public misconduct.**

SECTION 40. IC 34-24-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The prosecuting attorney in a county in which any of the property is located may bring an action for the forfeiture of any property:

- (1) used in the course of;
- (2) intended for use in the course of;

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(3) derived from; or  
 (4) realized through;  
 conduct in violation of IC 35-45-6-2.

**(b) The inspector general may bring an action for forfeiture in accordance with IC 4-2-7-6 in a county where property that is:**

- (1) derived from; or  
 (2) realized through;**

**misfeasance, malfeasance, nonfeasance, misappropriation, fraud, or other misconduct that has resulted in a financial loss to the state is located.**

~~(b)~~ (c) An action for forfeiture may be brought in any circuit or superior court in a county in which any of the property is located.

~~(c)~~ (d) Upon a showing by a preponderance of the evidence that: ~~the~~

**(1) property in question described in subsection (a) was used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of IC 35-45-6-2; or**

**(2) property described in subsection (b) was derived from or realized through conduct described in subsection (b);**

the court shall, subject to the right, title, or interest of record of any other party in the property determined under section 4 of this chapter, ~~(1)~~ order the property forfeited to the state and ~~(2)~~ specify the manner of disposition of the property, including the manner of disposition if the property is not transferable for value.

~~(d)~~ (e) The court shall order forfeitures and dispositions under this section:

- (1) with due provision for the rights of innocent persons; and  
 (2) as provided under section 4 of this chapter.

SECTION 41. IC 34-24-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. When an action is filed under section 2 of this chapter, the prosecuting attorney **or the inspector general** may move for an order to have property subject to forfeiture seized by a law enforcement agency. The judge shall issue such an order upon a showing of probable cause to believe that:

**(1) a violation of IC 35-45-6-2, involving the property in question in the case of property described in section 2(a) of this chapter; or**

**(2) conduct described in section 2(b) of this chapter, in case of property described in section 2(b) of this chapter;**

has occurred.

SECTION 42. IC 34-24-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Property subject to forfeiture under this chapter shall be seized by a law

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enforcement officer upon court order. Seizure may be made without a court order only if:

- (1) the seizure is incident to a lawful arrest or search, or to an inspection under an administrative inspection warrant; or
- (2) the property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding under this chapter (or IC 34-4-30.5 before its repeal).

(b) When property is seized under subsection (a), pending forfeiture and final disposition, the law enforcement officer making the seizure may:

- (1) place the property under seal;
- (2) remove the property to a place designated by the court; or
- (3) require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(c) Property seized under subsection (a) (or IC 34-4-30.5-4(a) before its repeal) is not subject to replevin, but is considered to be in the custody of the law enforcement officer making the seizure, subject only to order of the court. However, if a seizure of property is made in accordance with subsection (a), the prosecuting attorney **or the inspector general** shall bring an action for forfeiture under section 2 of this chapter within:

- (1) thirty (30) days after receiving notice from any person claiming a right, title, or interest in the property; or
- (2) one hundred eighty (180) days after the property is seized;

whichever occurs first.

(d) If an action under subsection (c) is not filed within thirty (30) days after receiving notice from any person claiming a right, title, or interest in the property, the claimant:

- (1) is entitled to file a complaint seeking:
  - (A) replevin;
  - (B) foreclosure; or
  - (C) other appropriate remedy; and
- (2) shall immediately obtain a hearing on the complaint as provided in subsection (f).

If an action is not filed within one hundred eighty (180) days after the date of the seizure, and the property has not been previously released to an innocent person under section 5 of this chapter (or IC 34-4-30.5-4.5 before its repeal), the law enforcement agency whose officer made the seizure shall return the property to its owner.

(e) If property is seized under subsection (a) (or IC 34-4-30.5-4(a) before its repeal) and the property is a vehicle or real property, the prosecuting attorney **or the inspector general** shall serve, within thirty

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(30) days after the date the property is seized and as provided by the Indiana Rules of Trial Procedure, notice of seizure upon each person whose right, title, or interest is of record in the bureau of motor vehicles, in the county recorder's office, or other office authorized to receive or record vehicle or real property ownership interests.

(f) The person whose right, title, or interest is of record may at any time file a complaint seeking:

- (1) replevin;
- (2) foreclosure; or
- (3) another appropriate remedy;

to which the state may answer in forfeiture within the appropriate statutory period. The court shall promptly set the matter for a hearing, and in the case of replevin or foreclosure, the court shall set the hearing as provided by the applicable statutory provisions.

SECTION 43. IC 34-24-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) If a person holding a valid lien, mortgage, security interest, or interest under a conditional sales contract did not know the property was the object of corrupt business influence **or conduct described in section 2(b) of this chapter**, the court shall determine whether the secured interest is equal to or in excess of the appraised value of the property.

(b) Appraised value is to be determined as of the date of judgment on a wholesale basis by:

- (1) agreement between the secured party and the prosecuting attorney; or
- (2) the inheritance tax appraiser for the county in which the action is brought.

(c) If the amount due to the secured party is equal to or greater than the appraised value of the property, the court shall order the property released to the secured party.

(d) If the amount due the secured party is less than the appraised value of the property, the holder of the interest may pay into the court an amount equal to the owner's equity, which shall be the difference between the appraised value and the amount of the lien, mortgage, security interest, or interest under a conditional sales contract. Upon payment, the state or unit, or both, shall relinquish all claims to the property.

SECTION 44. IC 34-24-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) An aggrieved person may, in addition to proceeding under section 4 of this chapter, bring an action for injunctive relief from corrupt business influence in a circuit or superior court in the county of the aggrieved person's

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residence, or in a county where any of the affected property or the affected enterprise is located. If the court finds, through a preponderance of the evidence, that the aggrieved person is suffering from corrupt business influence, the court shall make an appropriate order for injunctive relief. This order must be made in accordance with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that a showing of special or irreparable damage to the aggrieved person is not required. The court may order injunctive relief only after the execution of a bond by the aggrieved person for an injunction improvidently granted, in an amount established by the court. In addition, the court may order a temporary restraining order or a preliminary injunction, but only after a showing of immediate danger of significant loss or damage to the aggrieved person.

(b) An aggrieved person may bring an action against a person who has violated IC 35-45-6-2 in a circuit or superior court in the county of the aggrieved person's residence, or in a county where any of the affected property or the affected enterprise is located, for damages suffered as a result of corrupt business influence. Upon a showing by a preponderance of the evidence that the aggrieved person has been damaged by corrupt business influence, the court shall order the person causing the damage through a violation of IC 35-45-6-2 to pay to the aggrieved person:

- (1) an amount equal to three (3) times ~~his~~ **the person's** actual damages;
- (2) the costs of the action;
- (3) a reasonable attorney's fee; and
- (4) any punitive damages awarded by the court and allowable under law.

(c) The defendant and the aggrieved person are entitled to a trial by jury in an action brought under this section (or IC 34-4-30.5-5 before its repeal).

(d) In addition to any rights provided under section 4 of this chapter, an aggrieved person has a right or claim to forfeited property or to the proceeds derived from forfeited property superior to any right or claim the state has in the same property or proceeds.

(e) If the state is an aggrieved person, the attorney general ~~has~~ **and the inspector general have** concurrent jurisdiction with the prosecuting attorney to bring an action under this section.

SECTION 45. IC 34-24-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) A prosecuting attorney **or the inspector general** may retain an attorney

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to bring an action under this chapter.

(b) An attorney retained under this section is not required to be a deputy prosecuting attorney but must be admitted to the practice of law in Indiana.

SECTION 46. IC 35-41-1-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. (a) "Law enforcement officer" means:

- (1) a police officer, sheriff, constable, marshal, ~~or~~ prosecuting attorney, **special prosecuting attorney, special deputy prosecuting attorney, or the inspector general;**
- (2) a deputy of any of those persons;
- (3) an investigator for a prosecuting attorney **or for the inspector general;**
- (4) a conservation officer; or
- (5) an enforcement officer of the alcohol and tobacco commission.

(b) "Federal enforcement officer" means any of the following:

- (1) A Federal Bureau of Investigation special agent.
- (2) A United States Marshals Service marshal or deputy.
- (3) A United States Secret Service special agent.
- (4) A United States Fish and Wildlife Service special agent.
- (5) A United States Drug Enforcement Agency agent.
- (6) A Bureau of Alcohol, Tobacco, and Firearms agent.
- (7) A United States Forest Service law enforcement officer.
- (8) A United States Department of Defense police officer or criminal investigator.
- (9) A United States Customs Service agent.
- (10) A United States Postal Service investigator.
- (11) A National Park Service law enforcement commissioned ranger.
- (12) United States Department of Agriculture, Office of Inspector General special agent.
- (13) A United States Immigration and Naturalization Service special agent.
- (14) An individual who is:
  - (A) an employee of a federal agency; and
  - (B) authorized to make arrests and carry a firearm in the performance of the individual's official duties.

SECTION 47. IC 35-44-1-1, AS AMENDED BY SEA 15-2005, SEC. 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A person who:

- (1) confers, offers, or agrees to confer on a public servant, either

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before or after the public servant becomes appointed, elected, or qualified, any property except property the public servant is authorized by law to accept, with intent to control the performance of an act related to the employment or function of the public servant **or because of any official act performed or to be performed by the public servant, former public servant, or person selected to be a public servant;**

(2) being a public servant, solicits, accepts, or agrees to accept, either before or after the person becomes appointed, elected, or qualified, any property, except property the person is authorized by law to accept, with intent to control the performance of an act related to the person's employment or function as a public servant;

(3) confers, offers, or agrees to confer on a person any property, except property the person is authorized by law to accept, with intent to cause that person to control the performance of an act related to the employment or function of a public servant;

(4) solicits, accepts, or agrees to accept any property, except property the person is authorized by law to accept, with intent to control the performance of an act related to the employment or function of a public servant;

(5) confers, offers, or agrees to confer any property on a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, with intent that the person will fail to use the person's best efforts in connection with that contest, event, or exhibition;

(6) being a person participating or officiating in, or connected with, an athletic contest, sporting event, or exhibition, solicits, accepts, or agrees to accept any property with intent that the person will fail to use the person's best efforts in connection with that contest, event, or exhibition;

(7) being a witness or informant in an official proceeding or investigation, solicits, accepts, or agrees to accept any property, with intent to:

(A) withhold any testimony, information, document, or thing;

(B) avoid legal process summoning the person to testify or supply evidence; or

(C) absent the person from the proceeding or investigation to which the person has been legally summoned;

(8) confers, offers, or agrees to confer any property on a witness or informant in an official proceeding or investigation, with intent that the witness or informant:

(A) withhold any testimony, information, document, or thing;

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(B) avoid legal process summoning the witness or informant to testify or supply evidence; or

(C) absent the person from any proceeding or investigation to which the witness or informant has been legally summoned; or

(9) confers or offers or agrees to confer any property on an individual for:

(A) casting a ballot or refraining from casting a ballot; or

(B) voting for a political party, for a candidate, or for or against a public question;

in an election described in IC 3-5-1-2 or at a convention of a political party authorized under IC 3;

commits bribery, a Class C felony.

(b) It is no defense that the person whom the accused person sought to control was not qualified to act in the desired way.

SECTION 48. IC 35-44-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. A public servant who:

(1) knowingly or intentionally performs an act that ~~he the public servant~~ is forbidden by law to perform;

(2) performs an act ~~he the public servant~~ is not authorized by law to perform, with intent to obtain any property for himself or herself;

(3) knowingly or intentionally solicits, accepts, or agrees to accept from ~~his an~~ appointee or employee any property other than what ~~he the public servant~~ is authorized by law to accept as a condition of continued employment;

(4) knowingly or intentionally acquires or divests himself or herself of a pecuniary interest in any property, transaction, or enterprise or aids another person to do so based on information obtained by virtue of ~~his the public servant's~~ office that official action that has not been made public is contemplated;

(5) knowingly or intentionally fails to deliver public records and property in ~~his the public servant's~~ custody to ~~his the public servant's~~ successor in office when that successor qualifies; or

(6) knowingly or intentionally violates IC 36-6-4-17(b);

commits official misconduct, a ~~Class A misdemeanor~~; **Class D felony**.

SECTION 49. IC 35-44-1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) As used in this section, "pecuniary interest" has the meaning set forth in section 3(g) of this chapter.

(b) A person who knowingly or intentionally:

(1) obtains a pecuniary interest in a contract or purchase with an

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agency within one (1) year after separation from employment or other service with the agency; and

(2) is not a public servant for the agency but who as a public servant approved, negotiated, or prepared on behalf of the agency the terms or specifications of:

(A) the contract; or

(B) the purchase;

commits profiteering from public service, a ~~Class A infraction~~. **Class D felony.**

(c) This section does not apply to negotiations or other activities related to an economic development grant, loan, or loan guarantee.

(d) This section does not apply if the person receives less than two hundred fifty dollars (\$250) of the profits from the contract or purchase.

(e) It is a defense to a prosecution under this section that:

(1) the person was screened from any participation in the contract or purchase;

(2) the person has not received a part of the profits of the contract or purchase; and

(3) notice was promptly given to the agency of the person's interest in the contract or purchase.

SECTION 50. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 4-2-6-3; IC 4-2-6-5.

SECTION 51. [EFFECTIVE UPON PASSAGE] (a) **IC 4-2-6-13, IC 4-2-6-14, IC 4-15-10-4, IC 35-44-1-2, and IC 35-44-1-7, all as amended by this act, apply only to crimes committed after passage of this act.**

(b) **IC 35-44-1-1, as amended by this act, applies only crimes committed after June 30, 2005.**

SECTION 52. [EFFECTIVE UPON PASSAGE] **IC 5-22-1-3, IC 5-22-2-1, IC 24-4.7-5-1, and IC 24-5-12-23, all as amended by this act, and IC 5-22-3-7, as added by this act, apply only to a contract entered into or renewed after the effective date of this act.**

SECTION 53. **An emergency is declared for this act.**

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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